

09:54:54 1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 FORREST,) CV-22-3699-PCP
5)
6 PLAINTIFF,) SAN JOSE, CALIFORNIA
7 VS.) MAY 20, 2025
8)
9 META PLATFORMS, INC.,) PAGES 1-27
10)
11 DEFENDANT.)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE VIRGINIA K. DEMARCHI
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF: HECKER FINK LLP
350 FIFTH AVENUE, 63RD FLOOR
NEW YORK, NY 10118
BY: **JOHN QUINN**
TAYONNA NGUTTER

DEREK G. HOWARD LAW FIRM, INC.
42 MILLER AVENUE
MILL VALLEY, CA 94941
BY: **DEREK G. HOWARD**

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONT.'D)2 FOR THE DEFENDANT: PAUL, WEISS, RIFKIND, WHARTON &
3 GARRISON LLP
4 2001 K STREET, NW
5 WASHINGTON D.C., DC 20006
67 **BY: MELISSA BROOKE FELDER ZAPPALA**8 PAUL, WEISS, RIFKIND, WHARTON &
9 GARRISON LLP
10 535 MISSION STREET, 24TH FLOOR
11 SAN FRANCISCO, CA 94105
1213 **BY: WALTER F. BROWN
14 KATARINA COOPER
15 RUSSELL WIRTH**

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SAN JOSE, CALIFORNIA

MAY 20, 2025

2

P R O C E E D I N G S

3

(COURT CONVENED AT 10:06 A.M.)

10:06:12 4

THE COURT: GOOD MORNING. PLEASE BE SEATED.

10:06:14 5

THE CLERK: CALLING CASE 22-CV-03699-PCP.

10:06:20 6

FORREST VERSUS META PLATFORMS, INC., ON FOR DISCOVERY

10:06:22 7

HEARING.

10:06:23 8

IF THE PARTIES COULD STATE THEIR APPEARANCES, PLEASE,

10:06:25 9

BEGINNING WITH PLAINTIFF.

10:06:26 10

MR. QUINN: GOOD MORNING, YOUR HONOR.

10:06:26 11

JOHN QUINN FROM HECKER FINK FOR PLAINTIFF,

10:06:30 12

DR. ANDREW FORREST.

10:06:31 13

WITH ME IS MY TAYONNA NGUTTER AND OUR CO-COUNSEL,

10:06:36 14

DEREK HOWARD.

10:06:36 15

THE COURT: GOOD MORNING.

10:06:37 16

AND YOU ARE SORT OF BEHIND THIS LITTLE -- IT'S THE ONE ON

10:06:40 17

THE LEFT.

10:06:43 18

(PAUSE IN PROCEEDINGS.)

10:06:49 19

THE COURT: ALL RIGHT. AND LET'S HAVE THE

10:06:50 20

DEFENDANT'S APPEARANCE.

10:06:51 21

MS. ZAPPALA: GOOD MORNING.

10:06:52 22

ON BEHALF OF DEFENDANTS, MELISSA ZAPPALA FROM PAUL WEISS.

10:06:57 23

AND WITH ME ARE MY COLLEAGUES, WALTER BROWN, KATARINA COOPER

10:07:01 24

AND RUSSELL WIRTH.

10:07:02 25

THE COURT: GOOD MORNING.

10:07:03 1 WE ARE HERE FOR A DISCOVERY DISPUTE AT DOCKET 205 THAT'S
10:07:08 2 REGARDING META'S DISCOVERY FOR DR. FORREST. SO I'M GOING TO
10:07:12 3 BEGIN WITH META ON THIS QUESTION.

10:07:14 4 AND MY FIRST QUESTION, AND I WILL ASK IT OF BOTH PARTIES,
10:07:17 5 IS BOTH OF YOU REFER TO THIS FIRST PHASE OF DISCOVERY. ARE WE
10:07:22 6 NOT PAST A FIRST PHASE OF DISCOVERY AT THIS POINT?

10:07:24 7 I MEAN, IT SEEMS THAT YOUR CLOSE OF DOCUMENT --

10:07:28 8 SUBSTANTIAL DOCUMENT PRODUCTION -- IS MAY 30TH, AND ALL FACT
10:07:32 9 DISCOVERY CLOSES ON JULY 29TH, SO DO I NEED TO WORRY ABOUT
10:07:36 10 PHASES AT THIS POINT?

10:07:37 11 MS. ZAPPALA: I AM HAPPY TO TAKE THAT ISSUE.

10:07:41 12 THE COURT: YES, PLEASE.

10:07:41 13 MS. ZAPPALA: SO YES, WE ARE STILL IN PHASE ONE OF
10:07:44 14 DISCOVERY, AND WE ARE STILL LOOKING TO THE QUESTION OF, AS
10:07:48 15 YOUR HONOR NOTED IN THE PREVIOUS HEARING, WE PROCESSED THE
10:07:54 16 EXCLUSION AND THE FACT OF THE EFFECTIVE CONTENT OF THAT AS TO
10:07:56 17 INPUT AND OUTPUT.

10:07:57 18 WE ARE CURRENTLY IN THE PROCESS OF CONTINUING TO
10:08:00 19 INVESTIGATE THAT ON META'S SIDE, AND WE DO BELIEVE THAT THE
10:08:03 20 DOCUMENTS AND INFORMATION WE HAVE REQUESTED FROM PLAINTIFF GO
10:08:07 21 TO THAT ISSUE.

10:08:08 22 WE UNDERSTAND WE HAVE SAT DOWN AND IDENTIFIED, YOUR HONOR,
10:08:11 23 AND WE WOULD BE WILLING TO WORK WITH PLAINTIFF ON A PRODUCTION
10:08:14 24 OF INFORMATION OF DOCUMENTS PAST THE SUBSTANTIAL COMPLETION
10:08:18 25 DEADLINE.

10:08:18 1 THE COURT: OKAY. I'M NOT SURE THAT PHASES MATTER AT
10:08:21 2 THIS POINT, LET ME ASK DR. FORREST'S SIDE, DO WE NEED TO FOCUS
10:08:26 3 ON PHASES?

10:08:27 4 MR. QUINN: I'M HAPPY TO ABANDON THE WORD "PHASES."
10:08:29 5 I DO THINK TWO POINTS THAT ARE IMPORTANT.
10:08:32 6 ONE, WE ARE IN A LIMITED PERIOD -- A CABINED DISCOVERY
10:08:36 7 PROCESS FOCUSED EXCLUSIVELY ON META'S AFFIRMATIVE DEFENSE UNDER
10:08:40 8 230 WHICH IS JUST A QUESTION ABOUT WHETHER THEIR TOOLS AND
10:08:43 9 PROCESSES ARE MAKING A MATERIAL CONTRIBUTION TO AD CONTENT. SO
10:08:47 10 I DO THINK IT'S SIGNIFICANT TO THIS DISPUTE THAT THAT'S ALL
10:08:49 11 THAT WE ARE ADDRESSING IN DISCOVERY AT THIS TIME.

10:08:51 12 THE COURT: LIKE EVER IN THE CASE?
10:08:53 13 SO LET ME JUST ASK THIS BETTER QUESTION: SO BY JULY 29TH,
10:08:58 14 2025, PER JUDGE PITT'S ORDER, WHAT ARE YOU TO HAVE COMPLETED,
10:09:02 15 JUST THE DISCOVERY REGARDING THE SECTION 230 ISSUE?
10:09:05 16 MR. QUINN: I THINK THAT'S THE SHARED UNDERSTANDING
10:09:07 17 OF THE PARTIES, YOUR HONOR, YES.
10:09:08 18 MS. ZAPPALA: I WOULD ALSO NOTE WE HAVE REQUESTED AN
10:09:12 19 EXTENSION OF THE SUBSTANTIAL COMPLETION DEADLINE. WE ARE
10:09:14 20 CURRENTLY IN DIALOG WITH PLAINTIFF ON THAT ISSUE.
10:09:17 21 THE COURT: OKAY. BECAUSE WHEN I LOOKED AT THE CASE
10:09:20 22 SCHEDULE THAT YOU HAVE, IT SEEMED LIKE IT WAS NOT LIMITED TO
10:09:25 23 JUST THIS ISSUE, WELL MAYBE IT IS. SO THE SUMMARY JUDGEMENT
10:09:33 24 BRIEFING IS ONLY GOING TO BE IN THE 230.
10:09:36 25 OKAY. SO I'M NOT SURE IT MAKES SENSE TO TALK ABOUT

10:09:39 1 PHASES, BUT IN ANY EVENT, I UNDERSTAND THE POINT NOW.

10:09:41 2 OKAY. THANK YOU FOR THAT.

10:09:42 3 SO THEN WE HAVE THIS DISPUTE SORT OF FRAMED IN TERMS OF

10:09:46 4 CATEGORIES OF DISCOVERY THAT META WANTS, AND SORT OF THE

10:09:52 5 PROCESS TO GET AT THAT INFORMATION.

10:09:55 6 IT'S NOT REALLY BRIEFED IN THE SENSE OF THIS SPECIFIC

10:10:00 7 REQUEST IS OBJECTIONABLE FOR THIS REASON VERSUS THAT REQUEST OR

10:10:03 8 THIS INTERROGATORY, SO I MAY HAVE SOME QUESTIONS ALONG THE

10:10:07 9 LINES -- ALONG THE WAY WITH THOSE ISSUES, BUT KIND OF TREATING

10:10:12 10 THE DISPUTE IN THE WAY THE PARTIES HAVE FRAMED IT, IT SEEMS TO

10:10:16 11 ME THAT WITH MAYBE A COUPLE OF EXCEPTIONS IN THE

10:10:20 12 INTERROGATORIES, THE REQUEST THAT META HAS TRACK PRETTY CLOSELY

10:10:25 13 THE ALLEGATIONS IN THE COMPLAINT.

10:10:26 14 SO FROM META'S PERSPECTIVE, IS IT JUST A QUESTION OF HOW

10:10:30 15 DO WE GET AT ESI, FOR EXAMPLE, CUSTODIANS, SEARCH TERMS, THOSE

10:10:36 16 KINDS OF THINGS. AND IF THAT'S THE CASE, HAS META MADE A

10:10:39 17 PROPOSAL ALONG THOSE LINES WITH RESPECT TO CUSTODIAN, SEARCH

10:10:44 18 TERMS AND THE OTHER THINGS YOU WOULD NEED TO GET AT THE ESI?

10:10:49 19 MS. ZAPPALA: CERTAINLY, YOUR HONOR.

10:10:51 20 WHAT I WOULD SAY IS WE ARE CURRENTLY AT THE POINT WHERE

10:10:53 21 PLAINTIFF HAS REFUSED TO ENGAGE IN ANY DISCUSSION REGARDING

10:10:58 22 PRODUCTION OF DOCUMENTS OR INFORMATION RELEVANT TO PHASE ONE.

10:11:01 23 SO WE ARE MORE THAN HAPPY TO ENGAGE IN DISCUSSION WITH

10:11:10 24 PLAINTIFF REGARDING CUSTODIANS THAT -- WHERE DOCUMENTS MIGHT BE

10:11:10 25 IN THE POSSESSION OF DR. FORREST, BUT PLAINTIFF HAS EXTENSIVELY

10:11:17 1 REFUSED TO PRODUCE OR CONSIDER PRODUCING ANY DOCUMENTS RELEVANT
10:11:20 2 TO PHASE ONE OTHER THAN TO VERY LIMITED DISCREET SETS OF
10:11:25 3 DOCUMENTS.
10:11:25 4 ONE, THE ALLEGED SCAM ADS AT ISSUE, BUT PLAINTIFF HAS NOT
10:11:30 5 PRODUCED ANY DOCUMENTS OR COMMUNICATIONS ABOUT THOSE SCAM ADS
10:11:33 6 OTHER THAN THOSE THAT REFER TO THE SECOND BUCKET OF DOCUMENTS
10:11:37 7 THAT PLAINTIFF HAS PRODUCED WHICH ARE DOCUMENTS THAT THEY
10:11:41 8 PRODUCED IN THE AUSTRALIA CRIMINAL PROCEEDING, WHICH I WILL
10:11:44 9 SUBMIT ARE NOT RELEVANT TO PHASE ONE, ESSENTIALLY THEY ARE
10:11:48 10 DOCUMENTS THAT GO TO PHASE TWO WHICH ESSENTIALLY ADDRESSES THE
10:11:52 11 QUESTION OF META'S ISSUE TO COMBAT REGARDING SCAM ADS, HOWEVER
10:11:59 12 THIS PHASE ADDRESSES META'S ADVERTISING AND PROCESSES AND
10:12:02 13 PLAINTIFF HAS NOT WANTED TO ENGAGE IN THOSE DISCUSSIONS.
10:12:06 14 THE COURT: OKAY. AND IS IT YOUR UNDERSTANDING THAT
10:12:07 15 THE ONLY CUSTODIAN WHO IS RELEVANT HERE IS DR. FORREST HIMSELF,
10:12:10 16 OR DO YOUR REQUESTS ENCOMPASS PEOPLE HE MAY HAVE EMPLOYED TO DO
10:12:16 17 THE KIND OF INVESTIGATION AND MONITORING?
10:12:19 18 MS. ZAPPALA: YOUR HONOR, IT WOULD NOT JUST ENCOMPASS
10:12:24 19 DR. FORREST, AND WE WOULD WANT TO HAVE A DISCUSSION ABOUT
10:12:26 20 POTENTIAL CUSTODIAN AND SOURCES OF DATA.
10:12:28 21 THE COURT: OKAY. I DO HAVE -- BEFORE I LEAVE META'S
10:12:31 22 SIDE AND GO TO DR. FORREST'S SIDE, I DO HAVE SOME QUESTIONS
10:12:34 23 ABOUT INTERROGATORIES, NOT DOCUMENT REQUESTS, BUT THE
10:12:38 24 INTERROGATORIES, AND I THINK THOSE ARE AT -- EXCUSE ME --
10:12:46 25 EXHIBIT 3.

10:12:50 1 INTERROGATORY NUMBER TWO ASKS FOR INFORMATION ABOUT
10:12:54 2 ADVERTISEMENTS THAT DR. FORREST PLACED HIMSELF. AND I WAS
10:13:04 3 WONDERING HOW THIS INFORMATION, THE DETAILS THAT ARE BEING
10:13:07 4 REQUESTED IN INTERROGATORY NUMBER TWO, ARE RELEVANT TO A CLAIM
10:13:09 5 OR DEFENSE?
10:13:12 6 MS. ZAPPALA: SURE. ABSOLUTELY.
10:13:13 7 SO SINCE THIS PHASE OF DISCOVERY ADDRESSES META'S
10:13:19 8 ADVERTISING TOOLS, PROCESSES, AND IF DR. FORREST HAS IN FACT
10:13:23 9 CREATED ADVERTISING TOOLS, AND WE UNDERSTAND FROM THE DOCUMENTS
10:13:28 10 PRODUCED IN THE AUSTRALIA MATTER THAT DR. FORREST MAY HAVE
10:13:32 11 ENGAGED EXPERTS TO, IF NOT CREATE ADVERTISEMENTS, BUT CERTAINLY
10:13:37 12 ENGAGE IN THE PROFFER, THEN HE OR THE PEOPLE HE'S WORKED WITH
10:13:41 13 MAY HAVE AN UNDERSTANDING OF THE VARIOUS TOOLS AND PROCESSES
10:13:44 14 AND HOW THEY IMPACT HOW -- THE CREATION OF ADVERTISEMENTS.
10:13:49 15 THE COURT: I'M SORRY, YOU ARE SAYING THAT YOUR
10:13:51 16 UNDERSTANDING IS THAT DR. FORREST MAY HAVE CREATED ADS, LIKE
10:13:54 17 FOR TESTING PURPOSES, OR HAD AN EXPERT CREATE ADS FOR
10:13:58 18 INVESTIGATION PURPOSES?
10:13:59 19 MS. ZAPPALA: I'M NOT ENTIRELY SURE EXACTLY WHY, BUT
10:14:03 20 I DO BELIEVE THAT MAY HAVE HAPPENED.
10:14:05 21 THE COURT: OKAY. SO -- BUT I'M STILL NOT CLEAR ON
10:14:08 22 WHY, PER THE INTERROGATORY, META WOULD NEED TO KNOW HOW LONG AN
10:14:11 23 AD RAN, HOW MANY IMPRESSIONS IT RECEIVED, WHAT THE BUDGET WAS,
10:14:15 24 AND -- WELL MAYBE THE PURPOSE IS RELEVANT, BUT I'M NOT SURE.
10:14:18 25 WHY DO YOU NEED ALL THIS INFORMATION ABOUT HIS ADS?

10:14:21 1 MS. ZAPPALA: SURE.

10:14:22 2 I THINK WE WOULD BE OPEN TO A DISCUSSION ABOUT POTENTIALLY

10:14:25 3 NARROWING THE SCOPE OF THE INTERROGATORY, BUT I THINK THE FACT

10:14:28 4 REMAINS THE PLAINTIFF HAS REFUSED TO PROVIDE ANY INFORMATION

10:14:31 5 RESPONSIVE TO THAT INTERROGATORY.

10:14:32 6 THE COURT: OKAY. AND THEN WHILE WE ARE AT IT, LET

10:14:35 7 ME ASK ABOUT INTERROGATORY NUMBER FOUR, WHICH WAS THE OTHER ONE

10:14:39 8 THAT CAUGHT MY EYE. "IDENTIFY AND DESCRIBE THE EFFORTS OF YOU

10:14:42 9 OR THE CYBERSECURITY PROFESSIONALS TO IDENTIFY, ANALYZE,

10:14:46 10 INVESTIGATE AND INSPECT, ASSESS, EXAM OR EVALUATE THE ALLEGED

10:14:50 11 ADVERTISEMENTS."

10:14:51 12 SO WHAT DO YOU HAVE IN MIND THERE? A MASSIVE NARRATIVE

10:14:54 13 ABOUT THE ENTIRE INVESTIGATION, OR SOMETHING MORE TAILORED?

10:14:58 14 MS. ZAPPALA: WELL I THINK AGAIN, THIS IS SOMETHING

10:15:00 15 WE WOULD BE WILLING TO DISCUSS WITH PLAINTIFF. PERHAPS

10:15:03 16 PLAINTIFF WANTS TO PROVIDE A 33(D) RESPONSE, BUT WHAT WE HAVE

10:15:07 17 THERE IS TO UNDERSTAND PRECISELY WHAT PLAINTIFF HAS DONE TO

10:15:12 18 ENGAGE IN INVESTIGATION OF THE ADVERTISEMENTS. THERE HAS BEEN

10:15:14 19 A LOT OF PUBLICITY ABOUT DR. FORREST'S EFFORTS TO INVESTIGATE,

10:15:20 20 AND WE AGREE WITH PLAINTIFF ON A REASONABLE SCOPE.

10:15:24 21 THE COURT: OKAY. THANK YOU.

10:15:25 22 ARE THERE ANY OTHER MATTERS THAT YOU WOULD LIKE TO ARGUE

10:15:27 23 IN SUPPORT OF META'S POSITION BEFORE I TURN TO DR. FORREST?

10:15:31 24 MS. ZAPPALA: JUST A COUPLE OF THINGS THAT I WOULD

10:15:33 25 NOTE.

10:15:34 1 PLAINTIFF HAS REFUSED TO EVEN SHOW DOCUMENTS, AND
10:15:41 2 PLAINTIFF HAS SUGGESTED THAT THERE ARE NO DOCUMENTS THAT ARE
10:15:43 3 SORT OF RELEVANT TO PHASE ONE THAT THEY HAVE NOT ENGAGED IN AN
10:15:48 4 INITIAL REVIEW. AND I THINK WHAT WE ARE ASKING FOR IS A
10:15:51 5 REASONABLE SEARCH TO DETERMINE WHETHER OR NOT DOCUMENTS EVEN
10:15:54 6 EXIST.
10:15:55 7 AND I WOULD ALSO NOTE THAT PLAINTIFF HAS ALSO ASSERTED
10:15:58 8 THAT IT WOULD BE BURDENSOME FOR THEM TO GO AND LOOK FOR
10:16:01 9 DOCUMENTS ON THE THEORY THAT MOST OF THE DOCUMENTS WOULD BE IN
10:16:05 10 META'S POSSESSION.
10:16:06 11 BUT AGAIN, WHAT WE HAVE SEEN IS THAT DR. FORREST HAS IN
10:16:11 12 FACT ENGAGED IN SUBSTANTIAL ANALYSIS AND INVESTIGATION OF THE
10:16:18 13 SCAM ADS AND HAS NOT SUPPORTED A SOLUTION THAT IT WOULD BE
10:16:22 14 BURDENSOME.
10:16:22 15 AND THE FACT THAT HE HAS ENGAGED IN THESE INVESTIGATIONS
10:16:24 16 DEMONSTRATES THAT A REASONABLE SEARCH WOULD NOT BE BURDENSOME.
10:16:29 17 THE COURT: AND WHAT ABOUT THE PRIVILEGE AND/OR WORK
10:16:32 18 PRODUCT ARGUMENTS THAT ARE ADDRESSED AT A PRETTY HIGH LEVEL IN
10:16:36 19 THE BRIEFING?
10:16:37 20 MS. ZAPPALA: THANK YOU FOR THAT REMINDER,
10:16:40 21 YOUR HONOR.
10:16:40 22 YES, PLAINTIFF HAS, IN THE COMPLAINT, ASSERTED THAT THERE
10:16:44 23 ARE 1,154 SCAM ADS THAT HE HAS IDENTIFIED. AND HE HAD ASKED
10:16:50 24 PLAINTIFF TO IDENTIFY HOW HE HAS TRACKED THOSE SCAM ADS BECAUSE
10:16:56 25 PLAINTIFF HAS PRODUCED TO US ROUGHLY I BELIEVE 700 SCAM ADS.

10:17:01 1 WE ARE TRYING TO UNDERSTAND THE DELTA BETWEEN THE ALLEGATION IN
10:17:04 2 THE COMPLAINT AND WHAT PLAINTIFF HAS PRODUCED.

10:17:06 3 AND THE PLAINTIFF HAS ASSERTED THAT HE HAS TRACKED THEM IN
10:17:10 4 SOME WAY. SO WE ARE ASKING FOR INFORMATION ABOUT THE TRACKING.

10:17:15 5 NOW PLAINTIFF DID, IN THE BRIEFING, ASSERT PRIVILEGE OVER
10:17:19 6 THIS TRACKING INFORMATION, WE BELIEVE FOR THE FIRST TIME, AND I
10:17:22 7 WANT TO EMPHASIZE WE ARE NOT LOOKING FOR PRIVILEGED
10:17:25 8 INFORMATION, BUT TO THE EXTENT THERE IS NON-PRIVILEGED
10:17:28 9 INFORMATION REGARDING THIS TRACKING, WE THINK WE ARE ENTITLED
10:17:30 10 TO IT.

10:17:31 11 THE COURT: AND HAVE THE PARTIES EXCHANGED PRIVILEGE
10:17:34 12 LOGS AT THIS POINT?

10:17:35 13 MS. ZAPPALA: NO, WE HAVE NOT.

10:17:36 14 THE COURT: IS THERE A SECOND DEADLINE FOR DOING THAT
10:17:38 15 THAT YOU ALL HAVE AGREED TO?

10:17:40 16 MS. ZAPPALA: NO, THERE IS NO NOT A DEADLINE FOR
10:17:41 17 DOING THAT.

10:17:42 18 THE COURT: ALL RIGHT. THANK YOU.

10:17:43 19 LET ME TURN TO DR. FORREST.

10:17:45 20 AND I WILL JUST TELL YOU MY TENTATIVE IMPRESSION FROM
10:17:51 21 HAVING READ THE PAPERS.

10:17:53 22 I REALLY DON'T UNDERSTAND WHY DR. FORREST IS RESISTING THE
10:17:56 23 DISCOVERY HERE, AND I WILL TELL YOU WHY. HIS COMPLAINT
10:18:00 24 INCLUDES A NUMBER OF FACTUAL ALLEGATIONS THAT NOT ONLY SUGGEST
10:18:05 25 THAT HE HAS RELEVANT AND RESPONSIVE INFORMATION, AT LEAST AS OF

10:18:09 1 THE TIME THE COMPLAINT WAS PREPARED AND FILED, BUT THE DISPUTE
10:18:15 2 BEFORE JUDGE PITTS IN THE BRIEFING ON THE MOTION TO DISMISS
10:18:19 3 RESULTED IN A CONCLUSION -- A FINDING BY JUDGE PITTS THAT THERE
10:18:24 4 WAS A DISPUTE OF FACT BETWEEN THE PARTIES.
10:18:26 5 SO IT SEEMS TO ME THAT IN THIS SITUATION, DR. FORREST GETS
10:18:30 6 TO TAKE DISCOVERY OF META OF THE INFORMATION THAT META HAS AND
10:18:34 7 WILL RELY ON REGARDING ITS POINT OF VIEW ON THE SECTION 230
10:18:38 8 ISSUE, I'M USING THAT AS SHORTHAND, AND CONVERSELY META GETS TO
10:18:43 9 TAKE DISCOVERY OF DR. FORREST ON THE CONTRARY INFORMATION THAT
10:18:46 10 HE PURPORTS TO HAVE REGARDING HIS VIEW ABOUT THE ADVERTISING
10:18:50 11 TOOLS AND HOW THEY WORK.
10:18:53 12 AND SO HE'S NOT -- DR. FORREST IS NOT JUST A PASSIVE
10:18:57 13 VICTIM IN THIS SITUATION, HE WAS VERY ACTIVE, ACCORDING TO HIS
10:19:01 14 OWN COMPLAINT, IN INVESTIGATING WHAT WAS GOING ON, HOW THE ADS
10:19:06 15 WERE CREATED, ET CETERA, ET CETERA.
10:19:09 16 AND THIS INFORMATION IS NOT ONLY IN THE COMPLAINT BUT IT'S
10:19:12 17 BEEN IN PUBLISHED ARTICLES ABOUT THIS CASE.
10:19:17 18 SO DR. FORREST IS HERE IN U.S. COURT SEEKING RELIEF, AND
10:19:22 19 THAT MEANS U.S. DISCOVERY, WHICH IS UNPLEASANT, BUT IT JUST
10:19:26 20 SEEMS TO ME THAT WE HAVE TO LOOK AT RULE 26 AND THE RULES THAT
10:19:31 21 GOVERN ALL DISCOVERY, AND THAT'S RELEVANCE AND PROPORTIONALITY.
10:19:35 22 SO IF THE DISCOVERY REQUESTED IS RELEVANT TO A CLAIM OR
10:19:40 23 DEFENSE, AS IT APPEARS GENERALLY TO BE, AND IT'S NOT REALLY
10:19:45 24 ARGUED, AS I SAID, BETWEEN THE PARTIES ABOUT THIS PARTICULAR
10:19:48 25 REQUEST IS NOT RELEVANT, THAT THEN IT SEEMS LIKE THE FOCUS OF

10:19:53 1 THE DISPUTE IS PROPORTIONALITY.

10:19:56 2 THAT'S JUST MY TAKE, HAVING READ THE PAPERS, SO I INVITE

10:19:59 3 YOU TO RESPOND TO THAT AND ANYTHING ELSE YOU WOULD LIKE TO

10:20:01 4 RESPOND TO AT THE OUTSET.

10:20:02 5 MR. QUINN: SURE. THANK YOU, YOUR HONOR.

10:20:03 6 A NUMBER OF POINTS.

10:20:04 7 YOU KNOW, FIRST OFF I WILL AVOID THE WORD "PHASE" BUT WE

10:20:08 8 ARE IN THIS LIMITED -- HAVE A LIMITED SCOPE BEFORE US AT META'S

10:20:12 9 REQUEST ABOUT HOW ITS TOOLS AND PROCESSES DO OR DON'T MAKE A

10:20:15 10 MATERIAL CONTRIBUTION.

10:20:17 11 AND WE HAVE ALL USED THE TERM, PROVERBIAL BLACK BOX, TO

10:20:21 12 DESCRIBE THE NATURE OF THOSE FACTS. SO THAT'S JUST PROPRIETARY

10:20:24 13 INFORMATION, IT'S NONPUBLIC. THE COMPLAINT WAS BASED ON PUBLIC

10:20:27 14 INFORMATION, INTERVIEWS THAT MR. ZUCKERBERG HAS GIVEN ABOUT

10:20:31 15 MOVING IN THE DIRECTION OF AUTOMATED ADS AND AI ADS, BUT THE

10:20:37 16 COMPLAINT IS ASSEMBLED WITH THE ASSISTANCE OF COUNSEL AND SO

10:20:39 17 THERE ARE SERIOUS PRIVILEGE AND WORK PRODUCT ISSUES THERE.

10:20:42 18 AS FOR THE DOCUMENTS IN DR. FORREST'S POSSESSION,

10:20:45 19 CERTAINLY THERE ARE A NUMBER OF DOCUMENTS ABOUT DAMAGES,

10:20:47 20 CAUSATION, ET CETERA, ALL OF WHICH HAVE BEEN LEFT FOR AFTER

10:20:51 21 THIS PARTIAL SUMMARY JUDGEMENT MOTION IS DEALT WITH.

10:20:54 22 WE HAVE BEEN TRYING TO ADHERE TO JUDGE PITT'S GUIDANCE,

10:20:58 23 BOTH IN SOME OF THE EARLIER HEARINGS AND AT THE SCHEDULING

10:21:01 24 CONFERENCE, WHERE THE GUIDANCE REALLY WAS, I WANT TO GET THIS

10:21:04 25 BRIEFED BY THE END OF THE YEAR. HE REJECTED A JOINT SCHEDULE

10:21:06 1 PROPOSED BY THE PARTIES TO GIVE US THE GUIDANCE. LET'S JUST
10:21:09 2 GET THE DOCUMENTS FROM META ABOUT HOW THEIR TOOLS WORK AND GET
10:21:13 3 THIS BRIEFED THIS CALENDAR YEAR, AND THAT IS WHAT WE HAVE BEEN
10:21:16 4 ATTEMPTING TO DO.

10:21:17 5 DR. FORREST HAS NOT RESISTED ALL DISCOVERY, I FULLY ACCEPT
10:21:17 6 THE COURT'S POINT OF RULE 26 AND --

10:21:17 7 (REPORTER CLARIFICATION.)

10:21:17 8 MR. QUINN: SURE.

10:21:22 9 DR. FORREST HAS NOT RESISTED ALL DISCOVERY, AND IN FACT
10:21:26 10 HAS PRODUCED AT THIS POINT SUBSTANTIALLY MORE THAN META HAS
10:21:29 11 PRODUCED. WE HAVE PRODUCED, AS COUNSEL INDICATED, MANY
10:21:31 12 HUNDREDS OF SCAM ADS, UNTIL WE GOT A LATE PRODUCTION LAST
10:21:36 13 NIGHT, THEY HAD PRODUCED 14. WE STILL DON'T HAVE A RESPONSE TO
10:21:39 14 INTERROGATORY NUMBER ONE WHICH WE SERVED IN --

10:21:42 15 THE COURT: I'M SORRY, BUT THAT'S NOT RELEVANT TO
10:21:44 16 THIS DISCUSSION.

10:21:44 17 YOU CAN FILE YOUR OWN JUDGE DISCOVERY DISPUTE LETTER ON
10:21:48 18 THAT ISSUE AND I'M HAPPY TO HEAR ABOUT IT BUT IT'S NOT A
10:21:51 19 COMPARER -- IT'S NOT A CONTEST, WHO HAS DONE BETTER. IT'S IS
10:21:54 20 THE DISCOVERY RELEVANT AND RESPONSIVE AND IS IT PROPORTIONAL TO
10:21:59 21 THE NEEDS OF THE CASE.

10:22:00 22 SO I DON'T MEAN TO CUT YOU OFF IF THERE'S SOMETHING MORE
10:22:03 23 YOU WANTED TO SAY ABOUT THAT.

10:22:04 24 MR. QUINN: THERE IS.

10:22:05 25 WE HAVE PRODUCED THE SCAM ADS THAT WE CAN PRODUCE WITHOUT

10:22:12 1 SERIOUS WORK PRODUCT COMPLICATION BECAUSE THE TRACKING AND THE
10:22:14 2 COMPILATION WAS DONE BY COUNSEL IN THE PROCESS OF PREPARING A
10:22:16 3 COMPLAINT.

10:22:18 4 EVEN STILL, WE WENT AND WE PROPOSED AN AGREEMENT BETWEEN
10:22:20 5 THE PARTIES TO DEAL WITH SOME WORK PRODUCT CONCERNS. THAT THEN
10:22:24 6 ENABLED US TO PRODUCE HUNDREDS OF SCAM ADS EVEN THOUGH MANY OF
10:22:28 7 THEM ARE SCREEN SHOTS AND E-MAILS BETWEEN LAWYERS AND THE LIKE.
10:22:30 8 WE HAVE KIND OF GONE THE EXTRA MILE TO PRODUCE ALL OF THAT.

10:22:33 9 AND WE HAVE REPRODUCED THE AUSTRALIAN CRIMINAL PROCEEDINGS
10:22:38 10 PRODUCTION WHICH IS THOUSANDS OF DOCUMENTS THAT DID INCLUDE
10:22:41 11 SEARCHES THROUGH DR. FORREST'S BUSINESS, THROUGH HIS E-MAILS,
10:22:43 12 THROUGHOUT E-MAILS OF HIS ASSISTANTS AND HIS CONSULTANTS, AND
10:22:46 13 META ITSELF AT THE TIME WAS DEEPLY ENGAGED, THERE ARE DOZENS OF
10:22:49 14 FOLLOW-UPS, I'VE READ THEM, BETWEEN THE PARTIES.

10:22:52 15 THE COURT: I'M SORRY, THE SEARCHES YOU ARE
10:22:54 16 DESCRIBING WERE DONE IN CONNECTION WITH THE CRIMINAL
10:22:56 17 PROCEEDINGS?

10:22:56 18 MR. QUINN: THAT'S CORRECT, YOUR HONOR.

10:22:57 19 AND WITH THE HELP OF DR. FORREST'S ASSISTANCE AND TEAM AT
10:23:02 20 DIFFERENT ORGANIZATIONS. SO THEY HAVE ALL OF THAT. THEY HAVE
10:23:05 21 NEVER IDENTIFIED ANY DEFICIENCY OR GAP, THEY THEMSELVES USE --

10:23:08 22 THE COURT: OKAY. WELL HANG ON. ON THAT, JUST SO I
10:23:11 23 UNDERSTAND WHAT WAS DONE AND WHAT META KNOWS ABOUT IT, FOR
10:23:14 24 THOSE SEARCHES, DO YOU HAVE RECORDS OF WHICH CUSTODIANS WERE
10:23:17 25 SEARCHED, WHICH TERMS WERE USED OR WHAT THE METHODOLOGY OF THE

10:23:21 1 SEARCH WAS?

10:23:22 2 MR. QUINN: WE DO. I CAN SUMMARIZE SOME OF THAT

10:23:24 3 INFORMATION OR WE CAN KIND OF MEET AND CONFER.

10:23:26 4 THE COURT: BUT YOU CAN SHARE THAT WITH META.

10:23:28 5 MR. QUINN: SURE. AND HAVE, IN FACT, IN THOSE

10:23:30 6 PROCEEDINGS WITH THEIR COUNSEL THERE.

10:23:32 7 THE COURT: SO IF THERE WERE SOMETHING THAT META FELT

10:23:34 8 WAS MISSED BY THOSE SEARCH TERMS OR THOSE -- THERE WEREN'T THE

10:23:38 9 RIGHT CUSTODIANS OR THE RIGHT TIME FRAME, OR WHATEVER IT MAY

10:23:41 10 BE, THEN THE PARTIES COULD HAVE A DISCUSSION ABOUT WHAT MIGHT

10:23:44 11 NEED TO BE ADDED OR CHANGED.

10:23:46 12 MR. QUINN: CERTAINLY WE COULD HAVE THAT KIND OF

10:23:48 13 TARGETED DISCUSSION.

10:23:49 14 THE COURT: OKAY. ALL RIGHT.

10:23:50 15 SO I UNDERSTAND WORK PRODUCT. SEARCHES HAVE ALREADY BEEN

10:23:54 16 DONE. WHAT ELSE DID YOU WANT TO BRING TO MY ATTENTION?

10:23:56 17 MR. QUINN: YEAH, I THINK I WOULD JUST EMPHASIZE TO

10:23:59 18 AS TO THE AUSTRALIAN PROCEEDINGS, META'S OWN REQUESTS TO STAY

10:24:05 19 REPEATEDLY USE THE PHRASES "NEARLY IDENTICAL" AND TALKED ABOUT

10:24:09 20 THE CLOSE RELATIONSHIP BETWEEN THOSE ACTIONS.

10:24:12 21 ALSO JUST THAT THERE IS AN EXPERT PHASE COMING. SO

10:24:14 22 INSOFAR AS DR. FORREST HAS ENGAGED EXPERTS, CONSULTING EXPERTS

10:24:20 23 WHICH WE DISCUSSED WITH THE COURT PREVIOUSLY, COUNSEL IN

10:24:23 24 PREPARING THE COMPLAINT, THERE WILL BE AN OPPORTUNITY FOR

10:24:26 25 EXPERTS TO DEAL WITH ALL OF THIS.

10:24:28 1 AT THIS PHASE THE GOAL IS TO JUST GET DISCOVERY ABOUT HOW
10:24:31 2 META'S TOOLS AND PROCESSES WORK, AND DR. FORREST AS AN
10:24:34 3 OUTSIDER, HE REALLY DOESN'T HAVE THAT INFORMATION, THAT IS THE
10:24:38 4 CRUX OF WHAT WE ARE DOING AT THIS POINT, YES.

10:24:40 5 THE COURT: OKAY. SO HERE'S THE DIFFICULTY WITH THAT
10:24:43 6 POSITION, I'M JUST GOING TO START WHERE YOU ENDED, WHICH IS
10:24:49 7 WHETHER DR. FORREST HAS INFORMATION. AND WHEN I SAY
10:24:51 8 DR. FORREST, I MEAN HIM AND HIS TEAM OF CYBERSECURITY
10:24:53 9 PROFESSIONALS AND EXTERNAL FRAUD PROFESSIONALS, IF THOSE ARE
10:24:57 10 TWO DIFFERENT CATEGORIES, THOSE ARE ALL DESCRIBED IN DETAIL IN
10:25:02 11 THE COMPLAINT, AND THE REQUEST FOR PRODUCTION THAT I UNDERSTAND
10:25:04 12 ARE AT ISSUE HERE, TRACK THE ALLEGATIONS IN THE COMPLAINT.

10:25:07 13 SO IT'S NOT REALLY, IN MY VIEW, PERSUASIVE TO SAY, WELL HE
10:25:14 14 DOESN'T HAVE ANYTHING, BECAUSE HE HAS ALLEGED THAT HE DOES.
10:25:17 15 AND IF THE ANSWER IS, I MADE THAT ALLEGATION, OR DR. FORREST
10:25:21 16 MADE THE ALLEGATION, AND HE DOES NOT HAVE ANY DOCUMENTS THAT
10:25:24 17 REFLECT ANY OF THAT, THEN YOU CAN SAY THAT. BUT YOU CAN'T SAY
10:25:29 18 THAT WITHOUT HAVING DONE A SEARCH.

10:25:31 19 AND IF THE SEARCH HAS ALREADY BEEN DONE, OKAY, BUT IF THE
10:25:35 20 SEARCH HAS NOT REALLY LOOKED FOR THESE KINDS OF THINGS, BECAUSE
10:25:37 21 IT HAPPENED BEFORE HE MADE THESE ALLEGATIONS. I AM NOT
10:25:42 22 ENTIRELY SURE OF THE TIMING OF THE CRIMINAL PROCEEDINGS AS IT
10:25:45 23 PERTAINS TO THE OPERATIVE COMPLAINT, BUT META IS ENTITLED TO
10:25:49 24 FIND OUT WHAT CONTRARY EVIDENCE -- AND IT DOESN'T HAVE TO WAIT
10:25:53 25 UNTIL EXPERT DISCOVERY BECAUSE THIS IS PRE-LITIGATION

10:25:57 1 INVESTIGATION THAT IS USED AS A FACTUAL BASIS FOR THE
10:26:01 2 ALLEGATIONS IN THE COMPLAINT THAT JUDGE PITTS IN TURN RELIED ON
10:26:04 3 IN DENYING THE MOTION TO DISMISS ON THE SECTION 230 ISSUE
10:26:09 4 BECAUSE HE FOUND THAT THERE WAS A DISPUTE OF FACT BETWEEN THE
10:26:13 5 PARTIES.

10:26:13 6 SO IF DR. FORREST AND HIS VARIOUS PROFESSIONALS HAVE
10:26:16 7 INFORMATION ABOUT HOW THE ADS WERE CREATED USING THE TOOLS,
10:26:22 8 THAT IS CONTRARY TO THE INFORMATION THAT META HAS, WELL THEN
10:26:26 9 THAT'S WHAT JUDGE PITTS IS HOPING THE PARTIES WILL DISCOVER OF
10:26:31 10 EACH OTHER IN PREPARATION FOR YOUR FURTHER PROCEEDINGS.

10:26:35 11 IT'S CLEARLY WITHIN THE SCOPE OF THE ISSUE, AS I
10:26:37 12 UNDERSTAND IT. I DID NOT SEE ANY DOCUMENT REQUESTS THAT SEEM
10:26:40 13 TO BE OUTSIDE OF PHASE ONE. SO IF THERE IS SOMETHING AMONG
10:26:43 14 THEM THAT YOU THINK IS OUTSIDE OF THE SCOPE, IT'S NOT
10:26:47 15 PARTICULARLY CALLED OUT.

10:26:49 16 SO IS THERE SOMETHING THAT YOU ARE TRYING TO ALERT ME TO
10:26:52 17 THAT YOU THINK IS OUTSIDE THE SCOPE?

10:26:53 18 MR. QUINN: NO, I THINK OUR POSITION IS THAT THE
10:26:56 19 PRODUCTION OF THE SCAM AD COMPILATIONS AND COLLECTIONS AS BEST
10:27:00 20 WE CAN MUSTER THEM IN THE AUSTRALIAN PRODUCTION HAVE LARGELY
10:27:05 21 ADDRESSED THOSE ISSUES INSOFAR AS DR. FORREST HAS THOSE IN HIS
10:27:10 22 POSSESSION.

10:27:11 23 WE ARE STILL WORKING, AS WE APPROACH SUBSTANTIAL
10:27:13 24 COMPLETION, IF THERE ARE ADDITIONAL REPORTS FROM CONSULTING
10:27:15 25 EXPERTS, THOSE KINDS OF DOCUMENTS, WE DON'T HAVE ANY OBJECTION

10:27:18 1 TO PRODUCING THOSE MATERIALS TO META. OUR RESISTANCE, AND THE
10:27:21 2 WAY THIS HAS ALWAYS BEEN FRAMED IN DISCUSSIONS BETWEEN THE
10:27:24 3 PARTIES, IS ABOUT RERUNNING A BUNCH OF ESI SEARCHES AND
10:27:28 4 CUSTODIAL SEARCHES, WHEN REALLY GIVEN THE KIND OF INFORMATION
10:27:31 5 WE ARE TALKING ABOUT HERE, WE HAVE ALWAYS, BOTH SIDES REALLY
10:27:34 6 APPROACHED THIS LIMITED PERIOD OF DISCOVERY ON THE 230 QUESTION
10:27:39 7 AS ONE THAT'S LARGELY NONCUSTODIAL.

10:27:42 8 SO IT'S JUST THAT BURDEN WE ARE SEEKING TO AVOID. THERE
10:27:45 9 IS NO INFORMATION WITHIN THE SCOPE OF THE 230 QUESTION IN OUR
10:27:49 10 POSSESSION THAT WE HAVE ANY OBJECTION TO PRODUCING OTHER THAN
10:27:52 11 PRIVILEGE AND WORK PRODUCT INFORMATION.

10:27:54 12 THE COURT: WHAT DO YOU MEAN BY NONCUSTODIAL?
10:27:57 13 DR. FORREST IS AN INDIVIDUAL, SO HE IS A CUSTODIAN, HE'S NOT A
10:28:01 14 COMPANY, SO I'M NOT SURE WHAT YOU MEAN BY NONCUSTODIAL.

10:28:05 15 MR. QUINN: I GUESS I JUST MEAN THAT A CATEGORICAL
10:28:08 16 APPROACH, IF THERE ARE THIRD PARTY CONSULTING REPORTS, WE
10:28:11 17 SHOULD GATHER AND PRODUCE THOSE AS OPPOSED TO THE MULTI-YEAR
10:28:14 18 SEARCH TERM.

10:28:14 19 THE COURT: SO LET ME JUST CLARIFY MY VIEW ON THIS,
10:28:17 20 AND I AM HAPPY TO HEAR ARGUMENT. IF DR. FORREST HAS DONE AS
10:28:20 21 HE'S DESCRIBED IN HIS COMPLAINT AND EMPLOYED THIRD PARTIES TO
10:28:25 22 DO INVESTIGATIONS AND GATHER INFORMATION AT HIS DIRECTION, THAT
10:28:28 23 IS FAIR GAME BECAUSE THAT WOULD BE WITHIN HIS POSSESSION,
10:28:30 24 CUSTODY OR CONTROL, AS I UNDERSTAND IT.

10:28:32 25 SO I DON'T UNDERSTAND YOU TO BE SUGGESTING THAT -- MAYBE

10:28:36 1 I'M WRONG -- THAT THERE'S SOME THIRD PARTY, IN THE SENSE THAT
10:28:39 2 YOU WOULD HAVE TO GO GET A SUBPOENA TO GET THAT INFORMATION AT
10:28:42 3 ISSUE HERE; IS THAT RIGHT?
10:28:44 4 MR. QUINN: I AGREE WITH WHAT THE COURT SAID, AND I
10:28:46 5 DON'T TAKE ANY ISSUE WITH THAT.
10:28:48 6 THE COURT: OKAY. SO IT MAY BE THAT THE SEARCHES YOU
10:28:50 7 HAVE ALREADY RUN ONCE YOU DISCLOSE THAT DETAIL TO META IN THE
10:28:52 8 CONTEXT OF THIS CASE, THE PARTIES WILL BE IN VEHEMENT AGREEMENT
10:28:56 9 THAT THOSE ARE SUFFICIENT, AND AS LONG AS YOU REVIEW THEM,
10:28:59 10 BECAUSE THERE MIGHT HAVE BEEN A DIFFERENT PARAMETER FOR -- SO
10:29:02 11 YOU DO THE SEARCH, YOU FIND THE NARROWED COLLECTION OF ESI AND
10:29:06 12 THEN YOU REVIEW FOR RESPONSIVENESS, AND IF THOSE ARE NOT
10:29:09 13 ENTIRELY ALIGNED BETWEEN THE CRIMINAL PROCEEDING AND THIS CASE,
10:29:11 14 YOU ARE GOING TO NEED TO RELOOK AT WHAT THOSE SEARCH TERMS HIT
10:29:16 15 AND MAKE A DETERMINATION, AS YOU WOULD IN ANY CASE. BUT IT MAY
10:29:20 16 BE THERE ARE OTHER SEARCH TERMS THAT MAY BE NECESSARY.
10:29:22 17 AND THEN IF THERE ARE OTHER DOCUMENTS, ADDITIONAL
10:29:25 18 DOCUMENTS TO PRODUCE, I THINK YOU OWE IT TO META TO TELL THEM
10:29:30 19 THAT PART AFTER YOU'VE CONDUCTED A SEARCH SO THAT WE CAN ALL BE
10:29:33 20 ON THE SAME PAGE ABOUT WHAT THERE IS AND ISN'T.
10:29:37 21 CONVERSELY, IF YOU ARE PREPARED TO SAY WHATEVER META HAS
10:29:40 22 IS THE DEFINITIVE EVIDENCE OF HOW THE TOOLS WORK AND YOU HAVE
10:29:43 23 NO CONTRARY INFORMATION, WELL THEN MAYBE THE PARTIES SHOULD
10:29:46 24 CONSIDER THAT AS A RESOLUTION. BUT IT SOUNDS LIKE THAT'S NOT
10:29:51 25 DR. FORREST'S POSITION.

10:29:55 1 SO YOU KNOW, YOU CAN'T JUST WAIT UNTIL LATER, IS MY POINT.

10:29:59 2 NOW IS THE TIME TO PRODUCE WHAT YOU'VE GOT THAT YOU THINK

10:30:02 3 SUPPORTS THE ARGUMENTS THAT WERE MADE TO JUDGE PITTS OF A

10:30:06 4 FACTUAL MATTER, OKAY?

10:30:09 5 LET ME ADDRESS THE QUESTION OF -- AND BY THE WAY, I DON'T

10:30:12 6 SEE THAT AS PARTICULARLY BURDENSOME. THAT'S WHAT YOU DO WITH

10:30:16 7 THE SEARCH TERMS IS TO REDUCE THE BURDEN SO THE REVIEW CAN BE

10:30:21 8 TAILORED.

10:30:21 9 SO I'M INCLINED TO ORDER YOU TO DO THAT, BUT LET'S TALK

10:30:25 10 ABOUT THE WORK PRODUCT. I UNDERSTAND IT'S WORK PRODUCT, NOT

10:30:28 11 PRIVILEGE; IS THAT CORRECT?

10:30:30 12 MR. QUINN: I THINK FOR THE -- THE WHOLE CATEGORY

10:30:34 13 HERE PRESENTS A WORK PRODUCT ISSUE. THERE MAY BE DOCUMENTS

10:30:36 14 THAT WOULD RAISE PREJUDICE ISSUES, BUT I DO THINK WORK PRODUCT

10:30:39 15 IS THE PRINCIPAL PARADIGM, IF I COULD PUT IT THAT WAY.

10:30:44 16 THE COURT: OKAY. SO TYPICALLY IF YOU ARE GOING TO

10:30:46 17 MAKE A WORK PRODUCT OBJECTION TO A RESPONSIVE DOCUMENT -- A

10:30:50 18 DOCUMENT THAT'S RESPONSIVE TO A REQUEST, YOU NEED TO LOG IT,

10:30:53 19 YOU NEED TO DESCRIBE IT IN A WAY THAT ALLOWS THE ADVERSARY TO

10:30:58 20 ASSESS THE PRIVILEGE. YOU MAY BE ABLE TO LOG THESE THINGS

10:31:01 21 COLLECTIVELY, SOMETIMES THERE IS A CATEGORICAL APPROACH, IT'S

10:31:05 22 IN RULE 26, IF IT'S APPROPRIATE YOU CAN DO THAT, SOMETIMES IT'S

10:31:08 23 NOT APPROPRIATE.

10:31:09 24 BUT KEEP IN MIND THAT WORK PRODUCT CAN BE WAIVED IF YOU

10:31:14 25 DISCLOSE IT. AND I DON'T KNOW IF YOU'VE DISCLOSED IT IN THE

10:31:18 1 COMPLAINT OR IF YOU PUT IT AT ISSUE. AND IT DOESN'T PROTECT
10:31:24 2 FACTS.

10:31:26 3 SO THAT GETS ME TO THE INTERROGATORIES. SO THE
10:31:29 4 INTERROGATORIES MAY CALL FOR, IF A DOCUMENT IS PROTECTED BY A
10:31:31 5 PRIVILEGE OR WORK PRODUCT, THE INTERROGATORY MAY NEVERTHELESS
10:31:35 6 REQUIRE YOU TO DESCRIBE A NARRATIVE FORM, THE FACTUAL
10:31:40 7 INFORMATION THAT YOU HAVE, YOU MEANING DR. FORREST.

10:31:42 8 SO THERE'S SOME ADDITIONAL WORK THE PARTIES NEED TO DO ON
10:31:47 9 THE PRIVILEGE AND WORK PRODUCT ISSUE BECAUSE I DON'T HAVE
10:31:49 10 ANYTHING IN FRONT OF ME THAT ALLOWS ME TO MAKE A DETERMINATION
10:31:53 11 ON THOSE POINTS, AND I CAN'T SORT OF SAY, OH, YES, EVERYTHING
10:31:56 12 THAT YOU DID PRE-INVESTIGATION AND POSSIBLY DISCLOSED IN YOUR
10:31:59 13 COMPLAINT IS NEVERTHELESS PROTECTED.

10:32:04 14 DO YOU UNDERSTAND MY POINT? I MEAN MAYBE THERE IS SOME
10:32:07 15 "THERE" THERE BUT I CAN'T TELL FROM THE PAPERS. SO THAT MIGHT
10:32:11 16 REQUIRE A FURTHER SUBMISSION, BUT I'M HAPPY TO HEAR ARGUMENT
10:32:14 17 FURTHER ON THE WORK PRODUCT POINT IF YOU WOULD LIKE TO SHARE
10:32:17 18 THAT.

10:32:17 19 MR. QUINN: I THINK JUST TO EXPLAIN THE POINT WE WERE
10:32:19 20 MAKING WAS REALLY WORK PRODUCT WAS ONE OF THE FACTORS IN THE
10:32:22 21 PROPORTIONALITY ANALYSIS WHERE HAVING MADE THE PRODUCTION OF
10:32:26 22 SCAM ADS, HAVING DONE THE AUSTRALIAN DISCLOSURE PROCESS, DOING
10:32:31 23 MORE, IT SEEMED TO US, WAS NOT CONSISTENT WITH JUDGE PITTS'S
10:32:34 24 GUIDANCE, NOT RELEVANT, AND THE WORK PRODUCT WAS ONE OF THE
10:32:38 25 REASONS THAT STRUCK US AS NONPROPORTIONAL.

10:32:40 1 BUT I CERTAINLY UNDERSTAND THE COURT'S GUIDANCE ON THAT
10:32:43 2 POINT, JUST TO EXPLAIN WHERE WE WERE COMING FROM.

10:32:45 3 THE COURT: OKAY. SO NORMALLY I TEND TO TREAT WORK
10:32:48 4 PRODUCT AND PRIVILEGE AS DISTINCT -- IT'S BURDENSOME, BUT IT'S
10:32:53 5 ALSO JUST LIKE NOT ALLOWED UNLESS YOU CAN MEET THE REQUIREMENT
10:32:56 6 FOR DISCLOSURE OF WORK PRODUCT WHERE YOU NEED THE INFORMATION
10:32:59 7 FOR SOME REASON.

10:33:01 8 BUT I DON'T THINK THE PARTIES HAVE CRYSTALIZED THEIR
10:33:04 9 DISPUTE ON THIS POINT, IS MY ASSESSMENT.

10:33:06 10 SO I AM -- I THINK SOME FURTHER EFFORT IS REQUIRED, AND
10:33:11 11 I'M HAPPY TO HEAR FROM YOU BOTH ABOUT WHAT YOU THINK THAT
10:33:14 12 SHOULD LOOK LIKE, BUT I'M INCLINED TO HAVE YOU REPORT BACK TO
10:33:18 13 ME ON THAT POINT.

10:33:19 14 AND I CAN ISSUE A SHORT ORDER, AS I'M INCLINED TO DO, THAT
10:33:24 15 SAYS THIS DISCOVERY SHALL BE HAD, IT IS RELEVANT, AND IT IS
10:33:27 16 RESPONSIVE, AND IT DOES NOT APPEAR TO BE BURDENSOME,
10:33:29 17 PARTICULARLY IF CUSTODIANS AND CERTAIN TERMS ARE NEGOTIATED AND
10:33:33 18 THE REVIEW IS CONDUCTED AFTER THOSE ARE APPLIED.

10:33:37 19 AND I CAN'T RESOLVE THE WORK PRODUCT OR PRIVILEGE
10:33:41 20 OBJECTIONS IN A VACUUM. SO I'M INCLINED TO GIVE YOU THAT
10:33:44 21 GUIDANCE AND SEND YOU OFF TO DO SOME FURTHER WORK.

10:33:46 22 SO LET ME GIVE YOU, MR. QUINN, AN OPPORTUNITY TO RESPOND
10:33:51 23 TO THAT SUGGESTION AND THEN I WILL TURN BACK TO MS. ZAPPALA.

10:33:56 24 MR. QUINN: I THINK WE ALWAYS WELCOME THE COURT'S
10:33:58 25 GUIDANCE, AND ALWAYS, EVEN IF WE DO SOMETIMES VEHMENTLY

10:34:03 1 DISAGREE, CONFER PRODUCTIVELY. SO VERY HAPPY TO DO THAT AND
10:34:07 2 REPORT BACK.

10:34:08 3 I WILL SAY FOR BROADER CONTEXT, THEY HAVE MADE A REQUEST
10:34:11 4 FOR EXTENSION WHICH WE ARE CONSIDERING AND DISCUSSING, WE HAVE
10:34:15 5 ALSO MADE A PROPOSAL THIS MORNING TO TRY TO RESOLVE THE
10:34:20 6 PROTECTIVE ORDER THAT'S PENDING.

10:34:20 7 SO I THINK THERE ARE A NUMBER OF THINGS THE PARTIES CAN
10:34:21 8 CONFER PRODUCTIVELY ON AND REPORT BACK TO THE COURT, ON
10:34:23 9 INCLUDING THAT PROTECTIVE ORDER ISSUE WHICH REMAINS OPEN.

10:34:25 10 THE COURT: OH, IS THE PROTECTIVE ORDER ISSUE ALREADY
10:34:27 11 BRIEFED BEFORE ME?

10:34:28 12 MR. QUINN: IT IS. I THINK NOBODY REQUESTED A
10:34:31 13 HEARING ON IT SO IT WASN'T NOTICED FOR TODAY.

10:34:33 14 THE COURT: OH, I HAVE IT, AND I HAVEN'T LOOKED AT
10:34:33 15 IT.

10:34:34 16 SO WHEN DO YOU THINK YOU WILL KNOW WHETHER I HAVE TO
10:34:36 17 DECIDE ON THAT OR NOT?

10:34:38 18 MR. QUINN: I THINK MAYBE A STATUS REPORT IN 14 DAYS
10:34:39 19 ON ALL THESE ISSUES.

10:34:40 20 THE COURT: SO I HAVE A PROPOSAL FOR A STATUS REPORT
10:34:45 21 IN 14 DAYS AFTER SOME GUIDANCE AND ORDER ON THIS PARTICULAR
10:34:45 22 DISPUTE.

10:34:48 23 LET'S SEE, SO 14 DAYS WILL PUT YOU PAST THE MAY 30TH DATE.

10:34:53 24 WHAT IS THE -- WHAT IS META'S PROPOSAL?

10:34:58 25 MS. ZAPPALA: I'M SORRY, META'S PROPOSAL?

10:35:01 1 THE COURT: WHAT IS META'S PROPOSAL FOR OUR NEXT
10:35:04 2 STEPS HERE ON THIS DISPUTE?

10:35:05 3 MS. ZAPPALA: I THINK YOUR PROPOSAL MAKES SENSE. I
10:35:06 4 THINK THE PARTIES CAN MEET AND CONFER TO DETERMINE IF THEY CAN
10:35:10 5 REACH AGREEMENT ON A REASONABLE SCOPE OF DISCOVERY.

10:35:13 6 I SUSPECT THE PARTIES WILL HAVE SOME DISAGREEMENT BECAUSE
10:35:15 7 I THINK WE HAVE DISAGREEMENT AS TO THE RELEVANCE OF THE
10:35:20 8 AUSTRALIAN PROCEEDINGS, AND THE SUFFICIENCY OF THOSE, BUT WE
10:35:21 9 WILL ENGAGE IN A MEET AND CONFER, AND IF WE ARE NOT ABLE TO
10:35:24 10 REACH A RESOLUTION, WE WILL COME BACK TO YOUR HONOR.

10:35:27 11 THE COURT: AND DO YOU THINK THE 14 DAYS IS ENOUGH
10:35:29 12 TIME TO REPORT BACK TO THE COURT ON THAT ISSUE?

10:35:30 13 MS. ZAPPALA: I THINK WE MAY NOT BE COMPLETE, BUT WE
10:35:34 14 SHOULD BE CLOSE IN TEN DAYS.

10:35:38 15 THE COURT: OKAY. WELL I WILL SET THE 14-DAY
10:35:42 16 DEADLINE AND THEN IF YOU NEED MORE TIME, BECAUSE YOU ARE
10:35:44 17 ENGAGED IN PRODUCTIVE DISCUSSIONS, JUST LET ME KNOW AND I CAN
10:35:47 18 EXTEND IT.

10:35:47 19 BUT I WANT TO MAKE SURE THAT NEITHER PARTY IS PREJUDICED
10:35:51 20 BY DELAY GIVEN THE DEADLINES YOU CURRENTLY HAVE AND MAYBE YOU
10:35:52 21 WILL GET RELIEF FROM THOSE, BUT I THINK THAT'S IMPORTANT TO
10:35:55 22 KIND OF KEEP ON TRACK.

10:35:56 23 AND THEN PLEASE DO LET ME KNOW IF I DON'T NEED TO DO
10:35:58 24 ANYTHING ON YOUR PROTECTIVE ORDER ISSUE.

10:36:02 25 IS THERE ANYTHING ELSE THAT META WOULD LIKE TO RESPOND TO

10:36:05 1 BY THE WAY, I DIDN'T GIVE YOU AN OPPORTUNITY TO REPLY?

10:36:08 2 MS. ZAPPALA: NOT AT THIS TIME, YOUR HONOR.

10:36:09 3 THE COURT: OKAY GREAT.

10:36:09 4 THEN THAT'S WHAT I WILL DO, I WILL ISSUE A SHORT ORDER

10:36:12 5 GIVING YOU THAT DIRECTION AND GUIDANCE AND THEN I WILL WAIT TO

10:36:16 6 HEAR FROM YOU IN 14 DAYS.

10:36:18 7 ALL RIGHT. THANK YOU ALL VERY MUCH.

10:36:19 8 MR. QUINN: THANK YOU, YOUR HONOR.

10:36:19 9 MS. ZAPPALA: THANK YOU, YOUR HONOR.

10:36:20 10 (THE PROCEEDINGS WERE CONCLUDED AT 10:36 A.M.)

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3 **CERTIFICATE OF REPORTER**
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7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE
12 INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF
13 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

14
15
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17
18
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20
21 
22
23

24 SUMMER A. FISHER, CSR, CRR
25 CERTIFICATE NUMBER 13185

26 DATE: 5/21/25